

F I N A L
Public Right-of-Way
Sidewalk Space

February 1997

Prepared For:
City of Cincinnati

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Introduction

The City of Cincinnati has retained the firm of Pflum, Klausmeier & Gehrum Consultants, Inc. (PKG) to assist in the development of a coordinated approach and plan for permitted use of the sidewalk spaces in the City right-of-way by private parties. The scope of the study includes a review of existing laws and regulations in Cincinnati, a survey of regulations for right-of-way coordination in other cities, and recommendations on appropriate uses of the sidewalk spaces in the street right-of-way in Cincinnati. The study also includes an inventory of **all** existing sidewalk space elements (publicly owned, utility owned, and privately owned) on a selected sampling of Cincinnati streets of various classifications, to gain better knowledge and understanding of the overall conditions of the sidewalk areas.

Some clarification may be needed with regard to the terminology being used. The portions of the total street right-of-way covered in this study and report are the entire sidewalk spaces between the face of the curb (or edge of the pavement) and right-of-way or property line behind the walk, on each side of the street. The sidewalk space may all be paved, as in many business districts, or it may consist of a paved sidewalk strip, with grass or other material between the sidewalk strip and the curb. In most cases there is also be a grass strip between the paved sidewalk and the right-of-way or property line, except in business districts.

This report consists of four major parts, with appendices, as follows:

Part I is a review of existing City of Cincinnati laws and regulations concerning the use of the sidewalk space in the street right-of-way. It is emphasized that this is not a legal analysis. PKG is not authorized to perform such an analysis. However, a review of the various legislative and regulatory actions which have led up the current conditions should be of value.

Part II is a summary and analysis of the results of a survey sent to 49 cities of comparable size with Cincinnati, concerning the legislative, regulatory and enforcement practices of those cities with respect to various elements, mostly privately owned, which are frequently placed in the sidewalk space in the street right-of-way.

Part III is a description and summary of results of a field inventory of all of the elements, public and private, which are found within the sidewalk portion of the street right-of-way. The inventory covers the sidewalk space on both sides of approximately 39 miles of Cincinnati streets of various classifications.

Part IV presents some suggestions and/or recommendations for possible guidelines on appropriate uses of the sidewalk space in the street right-of-way, and regulation of them. It also suggests a specific strategy or sequence of legislative steps needed to bring the regulatory process concerning uses of the sidewalk space into a more orderly, consistent, simple, and manageable system, taking into account public safety.

Part V is a statement of the overall highlights of the study project.

I. Review of Right-of-Way and Sidewalk Area Regulations in Cincinnati

General

A history and background of the various regulatory actions and legislation concerning the sidewalk portions of the street right-of-way in Cincinnati which have led up to the current conditions may be of value. Of particular interest have been efforts to regulate advertising within the sidewalk areas

The Cincinnati Municipal Code (C.M.C.) was enacted in 1971, effective 1/1/72, replacing the previous Code of Ordinances, (C.O.), and reenacting many, if not most, of the provisions of the Code of Ordinances.

C.M.C. Section 502-22 reads as follows:

§502-22 Unofficial Traffic Signs.

No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation or resembles a traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for traffic-control devices.

Every such prohibited sign, signal, marking or device is hereby declared to be a public nuisance and the city manager or person designated by the city manager is empowered to remove the same or cause it to be removed.

This section is similar to Ohio Revised Code Sec. 4511.16, Prohibition against unauthorized signs and signals.

City officials have generally interpreted that the above provisions, particularly the clauses “which hides from view or interferes with the effectiveness of any traffic control device . . .”, prohibit any commercial advertising within the street right-of-way.

C.M.C. Sec. 911-17 specifically prohibits mounting on public property (including street right-of-way) any “handbill, card, circular or other printed material, including directional signs.” This section, originally carried forward from the old Code of Ordinances, has been amended a number of times to authorize the City to install, or permit to be installed, various types of special directional signs.

C.M.C. Sec. 911-17 also specifically permits “newspapers of general circulation in the City of Cincinnati” to be sold from “racks, containers, and bags attached to poles and other structures on City sidewalks. . . .”

Essentially, the above provisions established the framework by which advertising devices, and other private encroachments within the sidewalk space were prohibited and regulated until 1979. However, the practical limitations of the agencies charged with administration of these provisions (generally by the Public Works Department) precluded much active enforcement, except on a complaint basis, unless there was a specific public safety hazard involved.

Chapter 723 Streets and Sidewalks, Use Regulations, of the Cincinnati Municipal Code also contains several sections which deal directly with physical features owned or installed by parties other than the City. These include the following:

- Sec. 723-11 Retail Sidewalk Display
- Sec. 723-12 Free Standing Signs-- “Sandwich Boards”
- Sec. 723-17 U.S. Mail Boxes
- Sec. 723-19 Park-Type Benches
- Sec. 723-20 Advertising Benches
- Sec. 723-21 Litter Receptacles - Private Owners
- Sec. 723-22 Planters

Some of these sections predate the enactment of the C.M.C. in 1971; others are relatively new. A brief summary of the regulatory provisions, both legislative and administrative is included in the following subsections of this report. It should be noted that some comments regarding administrative problems, or lack of them, are not based on records or statistics, but on experience and recollections of present and former city employees.

Chapter 895 Outdoor Advertising Signs was enacted in 1989, by Ordinance No. 65-1989, primarily for the purpose of regulating the placement of billboards in the city. It identified, in Sec. 895-1-0, any advertising sign with a face area over four square feet, including benches, as being subject to the regulations in the Chapter, unless otherwise authorized by a revocable street privilege or an agreement with the city. Section 895-5(e) also stated, in part, that “. . . no portion of any outdoor advertising sign may be placed on, or extend over the right-of-way line of any street or highway.”

The subsequent passage of Ordinance No. 272-1989, establishing Section C.M.C. 723-20, which permits and regulates the placement of benches with advertising in the sidewalk space in the street right-of-way, makes Chapter 895 inapplicable to the street right-of-way.

In addition to the above regulatory framework established by the C.M.C., other types of legislation have resulted in use of the street right-of-way for privately-owned installations. These include the following:

- Pay Telephones (with or without booths)
- Bus Stop Shelters with Advertising
- Banners
- Revocable Street Privileges of various types

A brief summary of these, and their impact also follows.

Bus Stop Shelters With Advertising Panels

The first major change in the legislative climate regarding advertising within the street right-of-way occurred in 1979. City Council enacted a “notwithstanding” Ordinance No. 465-1979, which authorized and directed the City Manager to grant revocable street privileges to a private company,

Busstop Shelters, Inc. permitting the company to install shelters, with advertising panels, at bus stops within the City. The shelters were to be subject to approval of the construction and installation by the City of Cincinnati, and recognized that the company would install and maintain the shelters under an agreement with the Southwest Ohio Regional Transit Authority. A permit fee of \$100 was specified in the ordinance.

By Ordinance No. 283-1995, the City Manager, or his designee, was authorized to grant Philbin and Coins, Inc., also known as P. C. Media, the successor to Busstop Shelters, Inc. permits to maintain existing shelters with advertising panels, and to install new ones, with the plans, installation, and construction approved by the City Engineer. The ordinance authorized the Director of Public Works to establish both construction and annual maintenance inspection fees to pay the City's direct and indirect expenses.

Retail Sidewalk Displays

Retail sidewalk displays, that is displays of merchandise on shelves, racks or directly on the sidewalk, have been permitted for a long time, with a section in the old Code of Ordinances which was brought forward into the Cincinnati Municipal Code in 1972. Although such displays have not been highly controversial, there apparently was some concern over the size of such displays. Ordinance No. 383-1986, effective September 24, 1986, amended Section 723-11 to provide more specific dimensions and limitations on the extent of the displays.

Such displays do not require a specific permit. However, Section 723-11 does require the owner of the business to maintain a policy of general liability insurance, naming the City of Cincinnati as an additional insured in an amount of not less than \$100,000 to cover claims for any injuries rising from or related to the sidewalk merchandise displays. The section also requires that a certificate demonstrating this coverage must be filed with the office of Risk Management prior to using this public sidewalk for this purpose. The level of compliance with this requirement is minimal at this time.

Freestanding Signs (Sandwich Boards) on the Sidewalk

City Council passed Ordinance No. 184-1992, effective May 29, 1992, establishing a new Section 723-12 Freestanding Business or Identification Signs (Sandwich Boards) on Sidewalk. This section allows the owner or operator of a retail business or service to display a freestanding advertising sign on the sidewalk provided that the business maintains a liability insurance policy in the amount of \$100,000, and the section also establishes general guidelines for the placement of such signs. This section also authorized the City Manager to establish more definitive rules, and this was subsequently done in the form of Administrative Regulation No. 71 approved by the City Manager on July 10, 1992, which dealt in detail with the dimensions, placement and design of freestanding signs which were to be allowed. The level of compliance with the liability requirement is minimal at this time.

Administrative Regulation No. 71, as such, has been eliminated by the City Manager. However, the rules and regulations therein remain in effect as a regulation in the Public Works Department Right-of-Way Manual.

Litter Receptacles--Private Owners

Section 723-21-Abutting Owner Maintaining Litter Receptacles on Sidewalk has been in place without amendment since the Cincinnati Municipal Code was enacted in 1972 and was carried over from the previous Code of Ordinances without change. This section gives the City Manager the authority to permit the placement of litter receptacles in sidewalk space for use by the general public, by private parties, specifically the abutting property owners. Advertising on the litter receptacles is prohibited without specific permission of the City Manager, although identification of the donors has been permitted. A revocable street privilege permit is required, and receptacles installed by private parties have been allowed as long as they did not become nuisances. The Code Section 723-21 also does not deal with litter receptacles installed by other than the abutting property owner, such as by community councils, neighborhood block clubs, or adjacent businesses.

There have been few complaints or problems with privately installed litter receptacles.

News Racks

The unattended sale of newspapers on Cincinnati's streets goes back many years. The original legal authorization for such sales apparently resulted from legislation passed by Council as Ordinance No. 246-1957, in the former Code of Ordinances. It is believed that the original legislation referred only to bags attached to poles, but subsequent amendments have expanded this to include racks and containers. The original legislation was carried forward into the present Municipal Code as part of Section 911-17, and the specific provision "that newspapers of general circulation in the City of Cincinnati may be sold from racks, containers and bags attached to poles and other structures on City sidewalks in accordance with rules and regulations promulgated by the City Manager relating to the safety and unobstructed use of the streets by vehicular and pedestrian traffic." has not been changed in some years.

In the late 1980's and early '90's, a perception developed in many communities of the city, including the downtown area, that widespread proliferation of dispensers on the sidewalk was becoming an aesthetic problem, and also in some cases a pedestrian safety problem. The proliferation involved both an apparent major expansion of street sales by the Cincinnati daily newspapers, and also the entrance into the market on the street by out-of-town publications, such as The Wall Street Journal and The New York Times.

After extensive discussions with the distribution representatives of the local daily newspapers and some other interested parties, Administrative Regulation No. 67 was issued dated August 25, 1992. This regulation provided general guidelines applicable to all news racks and dispensers city-wide, and set up specific guidelines for the placement of such dispensers and racks within the Central Business District. Among the general provisions is the requirement that each owner of the news racks must submit a location inventory of all such devices located within the public right-of-way in the City annually by July 1. It also provides that a permit must be issued for the installation of any new news rack in the right-of-way following the acceptance of this regulation, with the permit to be issued by the Director of Public Works. Within the Central Business District, the regulations established were much more specific, including the regulation that news racks "shall be aligned in a row of not more than five in one location" as well as specific methods of attaching the racks to the sidewalk.

Administrative Regulation No. 67, as such, has been eliminated by the City Manager. However, the rules and regulations therein remain in effect as a regulation in the Public Works Department Right-of-Way Manual.

The general effect of this regulation has been that news racks and dispensers on the sidewalks are being better maintained, and that some newspapers are submitting their annual inventory lists by location. However, there is no indication that permits are being requested for each new location, particularly for publications other than the local daily newspapers, and there is no indication that the overall proliferation of news racks and dispensers has abated, nor that the limitation of “five news racks in a row at a single location” has been adhered to.

Planters and Other Movable Fixtures

C.M.C. Section 723-22-Planters and Other Movable Fixtures, allows the placement of planters and flower boxes by recognized community organizations within the public right-of-way by donation to the City. Advertising, other than an identification plaque, is prohibited on such planters. The City Manager is given the authority to adopt rules and regulations regarding such planters, and written permission from the abutting property owner must be submitted at the time of making the donation application. No specific rules and regulations have been adopted regarding such planters and other fixtures and the level of adherence to the procedure of a formal donation is not clear. Many planters have been placed without such a procedure being followed. In general, however, such planters have not been a source of frequent or major complaints from the public nor apparently have they caused serious problems. There are a few locations where planters have been placed which, because of their dimensions and/or restricted sidewalk width, have restricted the use of the sidewalk by pedestrians. This section was established by Ordinance No. 460-1991.

U.S. Mail Boxes

CMC Section 723-17, carried over from the old Code of Ordinances, grants the United States Post Office Department permission to attach and fasten U.S. Mail boxes to public lamp posts.

Although the wording of this section is out of date since nearly all mail boxes are now freestanding, it appears that the intent of the legislation, to cooperate with the United States Post Office, is quite clear. There have been few problems associated with this provision. There have been a few cases where a freestanding mail box obstructed visibility or caused some other problem, but the local postal authorities have been cooperative in dealing with such problems and relocating where necessary.

There is at present no legislation, nor any regulatory procedure regarding parcel drop boxes placed by Federal Express, United Parcel Service, Airborne Express, and other similar services. These boxes are generally similar in appearance, mounting and purpose to U.S. Office Boxes, and some regulatory procedure may be needed, although the number of such boxes is relatively small at this time.

Park Benches in Public Right-of-Way

The original provision in the former Code of Ordinances allowing community organizations or owners of abutting properties to place park benches within the public right-of-way for use by the general public was enacted in 1962 and its general provisions were carried forward to the Cincinnati Municipal Code in 1972 as Sec. 723-19. This section was subsequently amended in 1989 and 1991 by the same ordinances which provided for benches with advertising in the public right-of-way by making the construction and installation requirements similar for the two types of benches. The placement of park benches, without advertising, within the City right-of-way has not been a significant source of problems or complaints.

Advertising Benches in the Public Right-of-Way

The number of advertising benches adjacent to the roadway, both within the public sidewalk space and adjacent to it on private property, proliferated in the years leading up to 1989. However, in 1989 the City received a number of complaints concerning the proliferation and some concerning specific locations where benches had been placed. In a report submitted to Council concerning these complaints, the City Administration pointed out that the benches within the public sidewalk space were not legal under the provisions of Section 502-22, Section 723-19, and Section 911-17, as they were then understood and interpreted. It was stated that the Administration was prepared to issue orders for their removal. Complaints were then received, primarily from senior citizens, that the benches were needed by them, particularly at bus stops, and were in fact a public service. Subsequently, by Ordinance No. 272-1989, effective August 5, 1989, enacting C.M.C. Section 723-20, Advertising Benches in the Public Right-of-Way, was passed. The section was later amended by Ordinance No. 149-1991, apparently to make technical corrections and by Ordinance No. 20-1996 which substantially modified its provisions to grant greater authority to the City in its regulation of advertising benches.

The settlement of litigation between the City and a bench advertising company in May of 1996, resulted in the passage of Ordinance No. 187-1996 which granted specific privileges to the bench advertising company notwithstanding the provisions of chapters 718, 723 and 895 of the Municipal Code.

There remains a concern about potential littering problems associated with benches, with or without advertising, in the sidewalk space.

Projecting Signs Attached to Buildings

Projecting signs attached to buildings are permitted in some zoning districts, and are regulated by Section 1473-204(d) of the Zoning Code of the City of Cincinnati. The regulation most pertinent to this study states that the sign must not project more than two-thirds of the distance into the sidewalk at a height of 10 feet or more.

While there may be concerns over the appearance of such signs, the above limitations are such that they have little or no impact on the basic functions of the sidewalk space.

Coin-Operated Telephones

Coin-operated telephones have been allowed in the sidewalk space in Cincinnati, at least as far back as 1964. The most recent legislation was passed by City Council in 1995. Earlier legislation has not been located at this time, and was apparently of the “notwithstanding” or revocable street privilege type.

Ordinance No. 273-1995 authorizes the Director of Public Works to enter into agreements with Customer-Owned Coin Operated Telephones (COCOT's) to place public pay telephones on City-Owned property and in the public right-of-way, on a “leased space” basis. The authorized form for the agreement gives the Director of Public Works and the City Engineer a high degree of control over the placement of such telephones, specifies certain operating and physical requirements, and identified factors to be considered in approving or disapproving requests to place such telephones. The agreement also establishes liability insurance requirements, and provides for monthly payment to the City of percentages of the gross revenues of each COCOT. This ordinance does not appear to affect directly public pay telephones installed by Cincinnati Bell.

Ordinance No. 274-1995 does apply to all public pay telephones, and establishes new sections in Chapter 405 of the Cincinnati Municipal Code, concerning registration, permit fees, and removal procedures in the event a public nuisance develops of any existing, as well as proposed new pay telephones. This legislation resulted, at least in part, from concern over the possible use of public pay telephones for illegal purposes, and does not deal with the physical location or characteristics of the installation.

It is of interest to note that in the survey of other cities reported in Part II of this report, less than half of the cities reporting indicated that public pay telephones were permitted in the sidewalk space.

Banners

Banners attached to city-owned poles and other appurtenances were originally authorized by Ordinance No. 329-1981, which authorized and directed the City Manager to enter into an agreement with the Downtown Council to administer a “cultural and civic banner program in the Central Business District.” Ordinance No. 149-1989, amended the earlier ordinance by expanding the area covered to include the Central Riverfront area, and the east edge of the CBD to the east side of Eggleston Avenue, but apparently without major changes in the text of the agreement.

Some major provisions of the agreement include the following:

- Within the specified district, no banners, signs, or other decorations may be installed on City poles except by mutual agreement between the City and the Downtown Council.
- The graphic content of the banners is specified as “graphically or symbolically, representing the City,” or “representing or promoting nonprofit cultural or civic activities of general interest.” Dimensions are also specified.
- No advertising is permitted, but sponsors of “cultural or civic event or activity of general public interest” may be given “sponsorship credit”, occupying no more than 25% of the graphic space on the banner.
- Location and mounting of banners must be approved by the Director of Public Works.
- The City is held free and harmless from any liability, by the Downtown Council.

This banner program has apparently been well received by the public, and has been handled effectively by the Downtown Council, with few administrative problems for the City, once the mounting details for the banners were developed.

In addition to the above program, the Public Works Department has also issued permits to a number of community organizations to install banners on City-owned or utility owned poles within or on entrances to their neighborhoods. Overhead banners across City streets are generally not permitted as a policy due to safety concerns.

However, with the regulations under which they are installed, the banners installed under these programs have little or no impact on the primary functions of the sidewalk space.

Conclusion

In conclusion, there has been no coordinated approach to controlling or regulating the sidewalk space within the City right-of-way, as far as encroachments or privately owned features, and the application of the various ordinances and sections of the Cincinnati Municipal Code enacted to regulate such elements has been piecemeal, with little relationship to an overall philosophy or approach to the use and regulation of the sidewalk space.

II. Survey of Other City Right-of-Way and Sidewalk Area Regulations

General

An integral component of the overall study requested by the City of Cincinnati is a survey of other cities in the general population range of Cincinnati, to get ideas and viewpoints of the legal situations and current practices with respect to display type material within the public sidewalk space in these cities.

A survey form was sent to the chief executive or administrative officer of 49 cities. (Exhibit A is a copy of the transmittal letter to each.) These included all cities in the United States with populations between 250,000 and 500,00. Other cities in Ohio, namely Cleveland, Columbus, Akron and Dayton were included because of their proximity, and their operations under Ohio law. Three other cities, Boston, Indianapolis and Phoenix were also added because it was understood that they might have had some success in this general regulatory area.

The consultant and city staff recognized that the issues involved can be complex, and every effort was made to make the survey form as "respondent friendly" as possible. A matrix format was used so that the responses could simply be checked off for the various items. The recipients were also asked, if practical, that copies of their legislation and regulations be furnished. A prepared postage return envelope was provided for the returns, which were requested by August 2, 1996.

We have received responses from 26 cities. All had completed the questionnaire form, and 20 included copies of legislation and or regulations concerning items placed in sidewalk areas. The completed survey forms are included in Appendix I, under separate cover. A listing of the cities to which the survey was sent, and a listing of those which responded are also included with Appendix I.

Exhibit B shows the actual survey form, with a numerical tabulation of the survey responses on each question.

EXHIBIT A

City of Cincinnati



Department of Public Works
Division of Engineering

July 1, 1996

Room 445, City Hall
801 Plum Street
Cincinnati, Ohio 45202

Mayor Thomas M. Menino
City Hall
One City Hall Plaza
Boston, MA 02201

John Hamner
Director

Prem Garg, P.E.
City Engineer

Dear Mayor Menino:

The City of Cincinnati has experienced some serious legal problems in dealing with the private placement of various types of printed or display-type material within the public sidewalk areas (from face of curb to edge of right-of-way) of the City's streets, particularly in commercial areas and on major arterials. These problems have related both to permitting and enforcement procedures, as well as to more basic "First Amendment" or freedom of speech issues.

Therefore, the City has retained the firm of Pflum, Klausmeier & Gehrum Consultants, Inc. (PKG) to conduct a survey of cities in the general population range of Cincinnati, to get some idea of the legal situation and current practices in regard to these issues in other jurisdictions. Your cooperation in having the appropriate city official complete the enclosed survey form would be very much appreciated.

We realize that these can be complex issues, but we have attempted to make the survey form as simple as possible. A matrix format is used so that the responses can simply be checked off for the various items often found within the sidewalk areas.

We have also asked that, if practical, copies of your legislation and/or regulations regarding these items be provided, as these materials would be very valuable to us. However, if this is not feasible, it would still be tremendously helpful to receive the completed questionnaire itself.

In either case, we will be glad to provide you with a copy of the final report on the survey, and on our overall study.

We would appreciate the return of the survey form, and other material which you are able to provide by August 2, 1996, directly to:

T. E. Young, Project Coordinator
Pflum, Klausmeier & Gehrum Consultants, Inc.
7125 Reading Road
Cincinnati, OH 45237-3806

A return addressed envelope for the survey form is enclosed for your use.

Sincerely,

Prem Garg, P.E.
City Engineer

enclosures

Equal Opportunity Employer

EXHIBIT B-1

City Sidewalk Display Survey
City of Cincinnati

Questionnaire

Summary of Results

A. Does your City allow printed or displayed information to be disseminated on the sidewalk portions of your City streets, either by signs or printed material, by the following methods:

Item #	Yes	No	Don't Know
1. Pay telephones (with or without booths)	10	11	6
2. Banners	20	6	1
3. Bus shelters, with advertising or other messages	17	9	2
4. Park-type benches, with advertising or other messages	15	10	2
5. Newspaper or magazine dispensing machines, and/or other advertising material dispensers	22	3	2
6. Free-standing or "sandwich board" signs (movable)	6	18	3
7. Advertising or identification signs attached to building	23	2	2
8. Retail sidewalk displays	11	15	1
9. Sidewalk vendors' stands or carts	23	2	2
10. Other (mailboxes, litter receptacles, planters, etc.)	15	10	2

B. If answers to "A" above are "Yes", what is the specific legal basis by which permission is given, or is implicit without specific permission? (Check more than one legal basis if appropriate.)

Item #	1	2	3	4	5	6	7	8	9	10
State code	1	1	1	1	2	1	1	1	1	1
State law or statute (specific)	1		2		1					
City ordinance or other legislation	10	16	14	14	15	4	23	11	22	14
City administrative regulation		2	2	2		2		1	1	
City administration decision	2	3	2	1	3	1			1	2
Don't know					1	3				
Consistent w/Supreme Ct. Decisions					5					

C. If answers to "A" above are "No", what if any is the specific legal basis for these prohibitions? (Check more than one legal basis if appropriate.)

Item #	1	2	3	4	5	6	7	8	9	10
State code										
State law or statute (specific)	1		1	1						
City ordinance or other legislation	6	5	7	7	2	18	2	15	2	8
City administrative regulation										
City administration decision	1		1	2						1
Don't know	3	1	1	1						1

EXHIBIT B-2

City Sidewalk Display Survey
City of Cincinnati

Questionnaire (continued) Summary of Results

D. Is the actual placement of these devices controlled and/or regulated?

Item #	1	2	3	4	5	6	7	8	9	10
Yes	12	21	19	16	16	13	21	17	22	17
No	5	1	3	7	7	4	1	2	1	6

If answers are "Yes", how is this accomplished? (Check more than one if appropriate.)

Item #	1	2	3	4	5	6	7	8	9	10
City ordinance or other legislation	12	17	15	13	16	10	21	15	21	14
City administrative regulation		1	1	1		3		1	2	1
City administration decision or staff decisions	1	4	3	3	2		1	1		2

E. Is there a proactive or self-initiated program to administer and enforce the regulations in D or the prohibitions in C?

Item #	1	2	3	4	5	6	7	8	9	10
Yes	5	14	11	10	8	10	15	11	14	8
No	12	9	10	11	15	8	8	10	10	14

F. Within the past five years, has your city been involved in any litigation regarding any of these devices.

Item #	1	2	3	4	5	6	7	8	9	10
Yes	1	1	2	1		2	2	1	3	1
No	18	21	19	19	22	17	17	19	18	20

G. In your opinion, is the condition of the sidewalks in your City (primarily in commercial areas and on major arterials) generally satisfactory from the viewpoints of pedestrian walking space, safety, clutter and general appearance, under the legal and regulatory conditions presently existing?

24 Yes 1 No Any comments? _____

EXHIBIT B-3

City Sidewalk Display Survey
City of Cincinnati

Questionnaire (continued)

H. If the authorization, regulations, or restrictions on the above items are established by state or local legislation or regulations, could you provide us with a copy or copies of this legislation or regulation?

20 Yes 7 No Not Available

Would you like to receive a copy of the final report on our study?

23 Yes 3 No

If we have further questions on this subject, would you be willing to discuss them by telephone?

28 Yes 0 No

Contact Person _____ Title _____

Address _____

Telephone _____

If you have any questions or comments concerning the survey or the subject, please feel free to contact Tom Young, Project Coordinator, by telephone at 1-800/229-2690.

Please return this survey form and other available material directly to:

T. E. Young, Project Coordinator
Pflum, Klausmeier & Gehrum Consultants, Inc.
7125 Reading Road
Cincinnati, Ohio 45237-3806

By 2 August 1996

On question “G”, the only one inviting written comments, other comments were received, as follows:

Phoenix, Arizona

“We have adequate regulatory authority to keep sidewalks clear, but enforcing these regulations in a city of 450 square miles with six inspectors is a challenge. We enforce primarily on a complaint basis.”

Birmingham, Alabama

“Many of these ordinances have been challenged, but unsuccessfully, so our position has been strengthened by the Alabama courts.”

Honolulu, Hawaii

“In most areas (conditions are satisfactory). There are parts of town in older areas where sidewalks are too narrow.”

Tuscon, Arizona

(attached letter)

Long Beach, California

“Actual condition of sidewalks is not consistent with our regulatory requirements. A more pro-active approach would be very costly.” (also attached letter)

Boston Massachusetts

“Boston has an ordinance regulating the placement of goods for sale in the public way. Massachusetts has a statute which regulates hawkers and peddlers. Signs whether freestanding or attached to buildings are regulated by the Boston Zoning Code. Bus shelters are regulated by the MBTA, a State agency. There is a proposed newsrack ordinance pending at the Boston City Council.”

Newark, New Jersey

“Sidewalks outside commercial buildings maintained by owners. Municipalities here not responsible without prior notice of defect.”

Tampa, Florida

“(Sidewalks) still undergoing widening and improvements to ADA standards in some areas.”

Portland, Oregon

“Newsracks are an issue based on numbers and proliferation of small special interest newspapers or circulars. Items 6 & 8 (freestanding signs and retail sidewalk displays) are proposed for legalization.”

Pittsburgh, Pennsylvania

“A couple of individual locations might be too cluttered, but overall condition of sidewalks, under current regulations is good.”

“The city prohibits #6, 8 & 9 (freestanding signs, retail sidewalk displays, and sidewalk vendors) but permits them in a Riverfront Farmers Market area known as ‘Strip District’. However, the prohibition is not actively enforced. Enforcement usually occurs on a case by case basis and only after complaints have been made regarding the displayed signs. Item No. 2 (banners) are only permitted to advertise events within communities. However, corporations or businesses sponsoring such events may place their names on the banners. For item 1&5 (pay telephones and newsracks) other than granting permission for the placement of such items on public property, the City does not regulate advertisements on those machines. The City does permit the use of newspaper machines to distribute advertisements for various items such as realtor and apartment listings and car sale ads.”

Kansas City, Missouri

“Many of the encroachments are approved as part of a streetscape plan. Other encroachments are regulated depending on area of the City, because of the volume of the ordinances (copies of legislation not enclosed.)”

The survey form responses shown in Exhibit B do not always total up to the number of responding cities, since some questions allowed multiple answers, and some cities did not respond to every questions regarding every item. As might be expected, there were wide variations in many of the responses. However, some significant general tendencies were noted, as follows:

Section A

- A substantial majority of the responding cities allow banners, bus shelters with advertising, benches with advertising, newsracks, signs attached to buildings, and sidewalk vendors' stands on sidewalks.
- A majority do not permit freestanding signs or retail sidewalk displays, and, somewhat surprisingly, a borderline majority do not permit pay telephones.

Section B

- A substantial majority rely on local ordinances or legislation to regulate the placement of various items, with administrative regulations and decisions supplementing them. Very few referred to state codes or statutes.

Section C

- The responses showed heavy reliance on city legislation to prohibit certain items. Again, there were very few references to state codes or statutes.

Section D

- Strong majorities indicated that the placement of the items permitted is also regulated.

Section E

- Although the responses varied widely with respect to administration and enforcement of the regulations and prohibitions, only a bare majority of the responses indicated pro-active or self-initiated enforcement programs, as compared with enforcement on a complaint or observed violation basis.

Section F

- This question may have been somewhat misunderstood by some respondents. Six cities specifically indicated some litigation experience on this question, but several others in their comments or transmittal letters seemed also to indicate some litigation had occurred.

Section G

- An overwhelming majority indicated that they were generally satisfied with the condition of their sidewalks, although some qualifying comments were made.

Copies of the information on legislation and regulation have been furnished to the Cincinnati Law Department and Division of Engineering.

III Field Inventory of Items in Public Right of Way Sidewalk Space

As a major element in the overall study, the City requested PKG to conduct an inventory survey of existing structures, street furniture, fixtures, and other items within the sidewalk spaces on a representative sample of the Cincinnati streets of all classifications.

Scope of Field Inventory

Due to time constraints for completing the entire study on the schedule decided by the City, it was agreed by the City and the consultant that the field inventory would include approximately 10 percent of the Cincinnati Through Street System. Residential streets off that system, where there are few problems relative to the issues which led to the overall study, would not be included, at least in this initial survey.

A total of 39 street segments were selected for the field inventory, totaling about 39 miles in length, with about 78 miles of sidewalk. Exhibit C shows the streets selected and their classification on the Through Street System.

Selection of the streets to be inventoried was not done entirely at random. The consultant and the city staff agreed that there should be a strong inventory effort made in the business district,s where concerns over sidewalk space usage are probably the greatest. In other areas of the city, an effort was made to include as wide a range of traffic characteristics, types of abutting property, socioeconomic characteristics, and community representation as possible. Of the streets outside of the Central Business District, all but one (Clinton Springs Avenue) services a neighborhood business district.

Methodology

A number of techniques for carrying out the field inventory were considered. A prime factor in the selection was the City's desire that the data collection process be compatible with, and the data be easily input into the Cincinnati Area Geographic Information System (CAGIS). Among the techniques considered were Total Survey Station systems, GPS (Global Positioning System)

EXHIBIT C-1

City of Cincinnati R/W Study - Sidewalks
Proposed Streets to be Covered

	<u>Length Feet</u>	<u>Length Miles</u>
<u>Central Business District Streets</u>		
Fourth St., Pike to Central Ave.	4,380	0.83
Pete Rose Way, Central Ave. to Central Bridge	4,765	0.90
Seventh St., Broadway to Central Ave.	3,695	0.71
Ninth St., Broadway to Central Ave.	3,730	0.71
Walnut St., Third to Central Parkway	3,130	0.59
Main St., Third to Central Parkway	3,120	0.59
Race St., Third to Central Parkway	3,120	0.59
Vine St., Third to Central Parkway	3,120	0.59
Plum St., Central Parkway to Sixth St.	1,650	0.31
Total CBD Streets		5.82 Miles
<u>Major Arterial Streets</u>		
Vine St., Central Parkway to McMicken	3,600	0.68
W. Eighth St., Seventh to State Ave.	7,795	1.48
Glenway Ave., Quebec to Boudinot	11,865	2.25
Hamilton Ave., Hoffner to N. corp. Line	14,655	3.72
McMillan St., Clifton to Victory Parkway	7,765	1.47
Calhoun St., Clifton to Vine	2,680	0.51
Reading Rd., W. H. Taft to Paddock Rd.	10,500 ±	1.99
Wm H. Taft Rd., Vine to Victory Parkway	8,000 ±	1.51
Erie Avenue, Madison to Delta	7,050	1.33
Montgomery Rd., Norwood Corp. to Silverton corp.	10,970	2.07
Beechmont Ave., Plaza to s.e. corp. line.	4,850	0.92
Colerain Ave., Bahama Terr. to n. corp. line	4,450	0.84
Westwood Ave., Quebec to Harrison	4,950	0.94
Queen City Ave., Harrison to Quebec	4,800 ±	0.91
Central Pkwy., Plum to McMillan	8,000 ±	1.56
Total Major Arterials		22.12 Miles

EXHIBIT C-2

	<u>Length Feet</u>	<u>Length Miles</u>
<u>Collector & Local Streets</u>		
Linn St., Court to Bank	3,900 ±	0.74
Vine St., Corry to M. L. King	2,600 ±	0.49
Cedar Ave., Argus to Belmont	5,305	1.00
Corbly-Sutton Ave., Beechmont to s.corp. line	5,815	1.10
Ferguson Rd., Werk to Glenway	7,010	1.33
Paxton Ave., Wasson to Marburg	6,990	1.32
Whetsel Ave., Bramble to Peabody	2,420	0.46
Gracely Dr., River Rd. to Thelma	4,720	0.89
Clinton Springs Ave., Vine to Dana	7,290	1.38
Woodburn Ave., Madison to Montgomery	2,960	0.56
McHenry Ave., Harrison to Westwood Northern	3,000 ±	0.57
Markbreit Ave., Edwards to Madison	2,750	0.52
Twelfth St., Main to Central Parkway	2,300 ±	0.44
Pavilion St., Fort View to St. Paul	600 ±	0.11
St. Gregory St., Pavilion to Hatch	600 ±	0.11
Total Collector & Local Service Streets		11.02 Miles
Total Streets Surveyed		38.96 Miles

systems, low level aerial photography, and use of a tape and/or measuring wheel with field entry of data on to hard copy CAGIS maps, which could then be digitized into the CAGIS data base.

The methodology finally selected involved a combination of technologies. Where conditions permitted (moderate traffic, pedestrian activity and curb parking activity, moderate density of items to be inventoried) a laser gun, originally developed for forestry survey work, was used to make both longitudinal and lateral measurements along the sidewalk space. This device can be set up and oriented very quickly, and in fact, can be handheld. From a single point, locations of all items within about 200 feet can be measured and positioned with respect to a fixed point in the CAGIS data file, for example, a utility pole or fire hydrant. The coordinates are then relayed (usually by two-way radio) to the other survey team member who is equipped with a laptop computer programmed with CAGIS data base for the area, which he can actually see in map form on the computer screen. The computer operator immediately enters the data into the computer, which stores it directly into the local CAGIS file, and records the characteristics of the items being entered. Either, or both, the new data or the modified CAGIS file can be stored, printed out, or transferred through normal data processing techniques, including preparation of display maps.

The computer programming for this process was developed by Automated Data Technologies (ADT), a division of PKG based in Indianapolis. ADT had previously developed a somewhat similar system for a traffic sign inventory for the Cincinnati Division of Traffic Engineering.

In the Central Business District, it was found that, because of magnetic interference from closely spaced vehicles, and generally crowded conditions, the use of the laser gun was impractical. A measuring wheel and visual location of items related to fixed objects on the CAGIS maps were used instead. However, the data entry process into the CAGIS system with the laptop computer remained essentially the same. The field crews found the laser to be considerably faster of the two measuring methods, and it was used wherever conditions permitted.

It should be noted that neither of these measuring techniques produces results with land or construction survey degree of accuracy. However, they do produce an accuracy level consistent with the needs of this study, and in fact, within the assured accuracy level of the CAGIS system itself.

Items Inventoried

The intent of the inventory was to identify and locate every item between the curb (or edge of roadway) and the right-of-way line. Exhibit D shows the initial listing of items to be inventoried. Each item also had one or more attributes. Typical attributes common to all items included the street address or block number.

As might be expected, other items not thought of in the project planning process were soon discovered and continued to turn up throughout the field work. These items were easily added into the system. Also, for greater efficiency in the computer programming and to make the data entry process more user-friendly in the field work some revisions were made in the coding. The final listing of surveyed items and attributes is shown in Exhibit E.

Inventory Results

Appendix II in a separate cover contains printouts of the complete inventory result. A total of 27,179 items or elements were located and inventoried on the approximately 39 miles of streets covered..

Exhibit F shows a typical single sheet of the printed data. As might be expected, the number of elements in a given length of street varied widely depending on the type of development in the area. On a CBD street, for example, Fourth Street, between Pike Street and Central Avenue, 1,319 elements were located and inventoried, with an intensity of 1,505 elements per mile of street. At the other extreme, McHenry Avenue in Westwood, mostly residential, showed an intensity of only 203 elements per mile. Reading Road, between Paddock Road and William Howard Taft Road, with mixed business and residential development, showed an intensity of 405 elements per mile. On the total of approximately 39 miles inventoried, the average intensity was 697 elements per mile.

By street groupings, CBD streets had an average intensity of 1,107 elements per mile. Major Arterial streets an average intensity of 689 elements per mile, and Collector and Local streets an average intensity of 500 elements per mile.

EXHIBIT D

Right of Way/Sidewalk Areas

List of Structures, Fixtures, Street Furniture and other items:

01. Utility pole - wood
02. Traffic signal pole (with or without signal unit)
03. Street light pole - metal
04. Sign post
05. Street name sign
06. Traffic sign - regulatory
07. Traffic sign - warning
08. Traffic sign - guide (includes Ohio, U.S., and Interstate Route shields)
09. Traffic sign - parking regulation
10. Traffic sign - bus stop and/or bus information
11. Community identification sign
12. Queen City tour sign
13. Block Watch sign
14. Church directional sign
15. Parking directional signs - on poles or posts
16. Parking garage sign - on building
17. Parking garage sign - freestanding
18. Fire hydrants
19. Salt and sand barrel
20. Trees and tree grate
21. Utility, traffic control, or lighting pull box or manhole
22. Vault or cabinet, ground-mounted
23. Vault or cabinet on pole
24. Bollard for traffic restrictions or sidewalks
25. Guard rails or hand rails
26. Mail box (U.S. and rural)
27. Sidewalk vent grate and or transformer access
28. Garbage and trash receptacle
29. Pay telephone (with or without booth)
30. Awning or canopy (with and without advertising)
31. Banner
32. Benches (with and without advertising)
33. Bus shelter (with and without advertising)
34. Fence or privacy wall
35. Private lighting
36. Monument, plaque, or contractors' identification
37. Newspaper vending machine, or other advertising literature dispenser
38. Planter pot or box
39. "Sandwich board" or freestanding sign for business advertising
40. Sidewalk art (mosaic and ornamental designs in sidewalk paving)
41. Sidewalk cafe (tables and chairs)
42. Sidewalk door for underground access
43. Signs mounted to building (business advertising)
44. Building or step encroachment
45. Kiosk, or freestanding info sign
46. Fountain
- 47.
- 48.
49. Other sign
50. Other feature

EXHIBIT E-1

Cincinnati Right-of-Way Study

Features Inventoried

1	Pole	Pole
2	Traffic Sign with or without Post	Sign1
3	Other Sign	Sign2
4	ManHole/HandHole	Manhole
5	Tree/Tree Grate	Tree
6	Barrel (Sand/Salt)	Barrel
7	Fire Hydrant	Hydrant
8	Vault or Cabinet	Cabinet
9	Mail Box	Mailbox
10	Guard/Hand Rail	Rail
11	Billboard-Traffic Restrictions	BillBrd
12	Vent Grates/Transformer Access	Grates
13	Trash receptacle	Garbage
14	Pay Telephone	Phone
15	Awning/Canopy	Awning
16	Banner	Banner
17	Bench	Bench
18	Bus Shelter	Bus
19	Fence/Privacy Wall	Fence
20	Private Lighting	Lighting
21	Monument/Plaque/Contractors ID	Monument
22	Newspaper/Other Boxes	Box
23	Planter Pot/Box	Planter
24	Sidewalk Art (Mosaic,etc)	SideWlk1
25	Sidewalk Cafe	SideWlk2
26	Sidewalk door	SideWlk3
27	Building Step Encroachment	Building
28	Fountain	Fountain
29	Sandwich Board(Business Adv)	Sandwich
30	Other	Misc
31	Parking Meters	Pmeters
32	Walk/Don't Walk or Traffic Light	Pedheads

EXHIBIT E-2

Cincinnati Right-of-Way Study

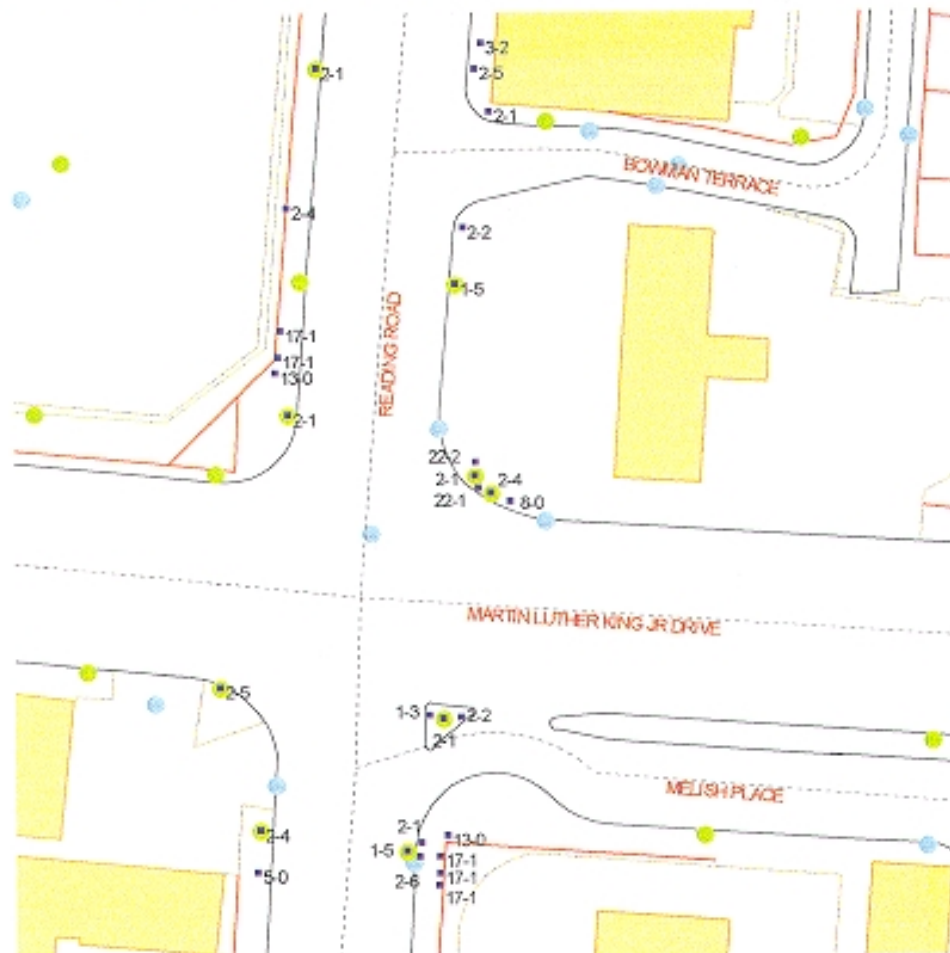
Attributes of Various Features

<u>Feature No.</u>	<u>Name</u>	<u>Attributes</u>
1.	Pole	1 Wood Utility Pole 2 Metal Light Pole 3 Signal Pole with Signal Unit 4 Signal Pole without Signal Unit 5 Missing pole
2.	Traffic Sign, with or without post	1 Street Name Sign 2 Regulatory Sign 3 Warning Sign 4 Guide Sign 5 Parking Regulation 6 Bus Stop/Information Sign 7 Community Identification Sign 8 Queen City Tour Sign 9 Block Watch Sign 10 No Sign (post ONLY)
3.	Other Sign	1 Parking Directional Sign 2 Parking Garage Sign - On Building 3 Parking Garage Sign - Freestanding
4.	Manhole/Handhole	1 Manhole Existing 2 Manhole Missing
7.	Fire Hydrant	1 Hydrant Existing 2 Hydrant Missing
17.	Bench	1 Bench Billboard Co. 2 Bench Advertising Co. 3 Other Advertising 4 No Advertising
18.	Bus Shelter	1 With Advertising 2 Without Advertising
22.	Newspaper/Other Boxes	1 Cincinnati Enquirer 2 Cincinnati Post 3 Other 4 No Advertising
25.	Sidewalk Cafe	1 1 table 2 2 tables 3 3 tables 4 4 tables 5 5 tables 6 6 tables 7 7 tables 8 8 tables 9 9 tables 10 10+ tables
31.	Walk/Don't Walk or Traffic Light	1 Pedestrian Walk/Don't Walk On Existing Map Feature 2 Traffic Signal Light On Existing Map Feature

EXHIBIT F

0 13d Trash receptical		3044 Reading Road
0 11 Pole	missing pole	3044 Reading Road
0 22 Traffic Sign/Post	Street Name Sign	3042 Reading Road
0 22 Traffic Sign/Post	Bus Stop/Information Sign	3042 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3042 Reading Road
0 17h Bench	Bench Billard Co.	3044 Reading Road
0 17h Bench	Bench Billard Co.	3044 Reading Road
0 17h Bench	Bench Billard Co.	3-44 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3043 Reading Road
0 30u Other		3043 Reading Road
0 30u Other		3044 Reading Road
0 22 Traffic Sign/Post	Guide Sign	3039 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3039 Reading Road
0 55 Tree/Tree Grate		3039 Reading Road
0 77 Fire Hydrant	Hydrant Existing	3041 Reading Road
0 11 Pole	missing pole	3042 Reading Road
0 22 Traffic Sign/Post	Guide Sign	3041 Reading Road
0 55 Tree/Tree Grate		3042 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3039 Reading Road
0 55 Tree/Tree Grate		3039 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3038 Reading Road
0 55 Tree/Tree Grate		3038 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3031 Reading Road
0 55 Tree/Tree Grate		3030 Reading Road
0 33 Other Sign	Parking Garage Sign - On Building	3027 Reading Road
0 22 Newspaper/Other Boxes	Cincinnati Enquirer	3020 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3020 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3020 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3013 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3013 Reading Road
0 22 Traffic Sign/Post	Parking Regulation	3010 Reading Road
0 11 Pole	missing pole	3012 Reading Road
0 13d Trash receptical		3009 Reading Road
0 17h Bench	Other Advertising	3005 Reading Road
0 17h Bench	Bench Billard Co.	3009 Reading Road
0 17h Bench	Other Advertising	3009 Reading Road

EXHIBIT G



- Inventory Feature
- Street Centerline
- Pole
- Manhole
- Sidewalk
- Pavement
- Driveway
- Parking
- Fence
- Building

0 46 92 138 Feet



CAGIS Planimetric Base Mapping : City of Cincinnati
Sidewalk Inventory : Pflum, Klausmeier & Gehrum Consultants

Cincinnati Right-of-Way (Sidewalk) Inventory
Prototype Plot

These street segments, or portions of them, or any other street segment included in the survey, can be plotted directly as CAGIS maps showing all of the elements inventoried and their code numbers at a scale sufficient for display maps at meetings. Exhibit G shows a sample of such a plot. Plots from the computerized data can be customized by City personnel to meet almost any need. The inventory did show that a total of 560 "poles" shown on the CAGIS maps for these street segments do not now exist.

Special data tabulations can also be obtained. For example, a listing of any single element, or combination of elements, for any street segment or combination of street segments can readily be tabulated.

The sheer number of objects and fixtures already in place on the sidewalk system, the majority of which are public safety or public service features, tends to illustrate the complexity of the problems inherent in regulating the placement of privately owned objects and features in the sidewalk space.

The field survey crews reported that they observed relatively few locations where objects or devices placed in the sidewalk space actually obstructed clear pedestrian paths, mostly in the Central Business District. They also did not observe situations where such objects or devices actually obstructed safe sight distances for pedestrians or motorists, or directly obstructed the visibility of traffic control devices. However, the overall impact of "visual clutter" with respect to traffic control devices is difficult to evaluate. Trash and litter accumulations were also observed around some objects, particularly those actually used by people, such as benches and shelters.

IV Suggested Guidelines for Regulations

The City of Cincinnati can regulate the placement in the sidewalk space of printed materials, either in paper form (newspaper or pamphlets, etc.) or sign form (on benches or freestanding signs), providing that the right of freedom of speech is not abridged.

Other objects or devices, such as planters, litter receptacles, sidewalk cafe tables, and other decorative street furniture, can be regulated by the City, by various sections of the Cincinnati Municipal Code, and supplemented in some cases by Administrative Regulations.

Environmental Quality Districts, which City Council may establish under the provision of the Cincinnati Zoning Code, could also contain regulations which might be more restrictive regarding the placement of privately owned objects and devices within the sidewalk space. The type district most likely to be involved would be an Environmental Quality Urban Design (EQ-UD) District, C.M.C. Sec. 1459-230. This designation is limited to business districts, and requires City Council to have adopted an Urban Design Plan for the District. Such a plan could include restrictions, or special regulations concerning objects or devices placed in the sidewalk space. However, this section includes the provision that the plan not include guidelines which would prohibit advertising signs within the district. The City Planning Commission is currently considering the possibility of revising this section.

The sidewalk space serves several basic functions including:

1. Provides an area “. . . intended for the use of pedestrians”, which can be further defined by paved walkways. Pedestrian usage may include, but is not limited to:
 - a. Walking to or from location not in the immediate area.
 - b. Access to or from adjacent properties.
 - c. Walking to or from bus stops.
 - d. Access to or from parked or stopped vehicles.
 - e. Walking to or from street crossings.

The Cincinnati Municipal Code also permits “minors under 15 years of age” to ride bicycles on the sidewalk where building do not abut the walk.

2. Provides space for utility poles and other facilities and their maintenance which cannot practically be located within the actual roadway. Access to these facilities must be available to provide for their maintenance.
3. Provides space for placement and maintenance of traffic control devices and their support structures. Access must be available to these devices and structures to provide for their maintenance.
4. Provides an interface access area between the public right-of-way and adjacent private property, and between the street pavement and the sidewalk space. This includes pedestrian movements between parked or stopped vehicles and adjacent structures or property, as well as vehicular access across the sidewalk space to enter or leave private property.
5. Provides an area where publicly-owned and maintained convenience and decorative features and street furniture to improve the appearance of the area can be installed, provided the first four functions are not adversely affected. Once installed, access to these features must be maintained for maintenance purposes.

City Council could take the position that all privately placed objects and/or devices, except for regulated utility facilities, should be prohibited from the sidewalk spaces on City streets, and could enact legislation to that effect.

The alternate approach is to allow various objects and devices, including those with advertising messages, to be placed within the sidewalk space, in such a manner and at such locations so as not to interfere with the basic functions of the sidewalk space.

There are many factors which must be involved in the development of guidelines for a regulatory system following the latter approach. These factors, based on sound right-of-way management practices, include, but are not limited to, the following:

- Width of the sidewalk space;
- Width, continuity and alignment of paved walkway, and “safe passageway” particularly for handicapped pedestrians;

- Width of “collector strip” along curb or edge of roadway for utilities, fire hydrants, traffic poles, traffic sign posts and parking meters;
- Locations of devices relative to building or property entrances;
- Pedestrian volumes and pedestrian usage, if any, between the device and the curb;
- Dimensions of devices to be installed;
- Types of mounting on sidewalk, including location stability, height, “footprint:” area, and tipping stability;
- Effect on the abutting property owner’s ability to maintain the sidewalks;
- Aesthetic, social, and public safety issues;
- Compliance with ADA requirements; and
- Potential problems with loitering and with accumulation of trash and litter.

A relatively new consideration with respect to City sidewalks is the provision of accessibility and safety for handicapped persons. Specifically, this involves compliance with the rules and regulations, where applicable, established under the federal Americans with Disabilities Act (ADA). The primary impact on sidewalks is the provision of curb ramps at intersection and other pedestrian street crossings.

While not covered in any existing City legislation, it is the policy of the City of Cincinnati that wherever a new sidewalk is constructed, or an existing sidewalk is repaired, remodeled, or modified, curb ramps for the handicapped shall be provided for all pedestrian crossing paths. This applies whether the sidewalk work is done as an independent project, or as a component of any public or private construction project. This policy is followed by City agencies, and additionally, the Public Works Department has, as a special program, installed ramps at all Central Business District intersections not otherwise covered.

Other provisions of the ADA rules state that (a) the desirable minimum clear width of a walkway should be four to five feet, with an absolute minimum of three feet, and (b) that objects on a wall or barrier adjacent to or within a walkway should extend down to within 27” of the pavement so that they are in normally detectable “cane range” for a visually handicapped person. “Cane range” is the elevation over the walking surface above which the bottom of a projecting object may not be detected by a visually handicapped person using a cane.

The City's sidewalk design and use regulations can and should include these requirements.

There are also practical considerations with respect to simplicity and understandability, ease and costs of administration, and enforcement. The question of what items should be covered in the Cincinnati Municipal Code and what should be in the administrative rules and regulations, or both, or some other format must be considered, as well as whether some objects or devices should be exempted from a formal permit process.

It is the opinion of the consultant that the first step in developing a practical regulatory system is to accept the premise that the Cincinnati Municipal Codes does identify three primary functions of the sidewalk space between the curb and the edge of the right-of-way, as follows:

1. Sec. 721-1-5 ". . . the area set aside for pedestrian use."
2. Sec. 502-10 authorizes the City Manager to install traffic control devices, most of which must be placed in the sidewalk space.
3. Chapters 401, 404 and 405, give permission for public utilities to use streets for utility lines, including sidewalk spaces.

From these, it can reasonably be concluded that space must be reserved in the sidewalk space for:

1. A safe passageway for pedestrians, which should be of adequate width, and to the extent practicable, in a continuous alignment.
2. Public safety, public service, and utility devices.

Other devices, structures, or equipment which the City may permit to be placed within the sidewalk area should not interfere with these two basic functions.

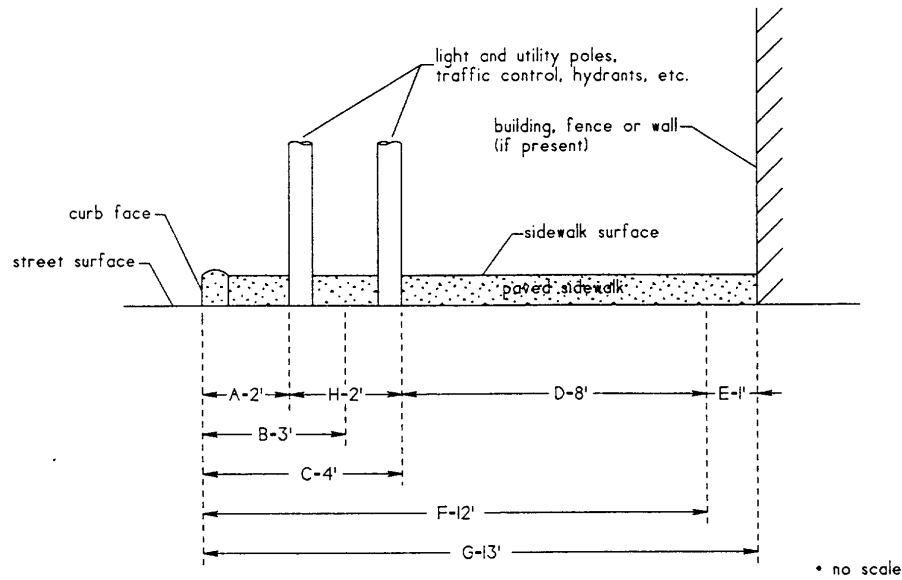
The width of sidewalk space required to perform the basic functions varies depending on the factors mentioned previously. However, a reasonable allocation of minimum width by areas, which generally reflect the level of pedestrian activity and utility/traffic control facilities might be as follows:

<u>Area Type</u>	<u>Utility/Traffic Control Collector Strip</u>	<u>Clear Paved Walkway</u>	<u>Total Sidewalk Space Width</u>
Core Area, CBD	4'	8'*	12'*
CBD Fringe Area, NBD's, and School Zones	4'	6'*	10'*
Residential and Other Non-Commercial Areas	3'-3"	4'*	7'-3"*

*Plus 1' if adjacent to building or structure.

Typical sidewalk cross sections representing these dimensions are shown on the following pages.

EXHIBIT H

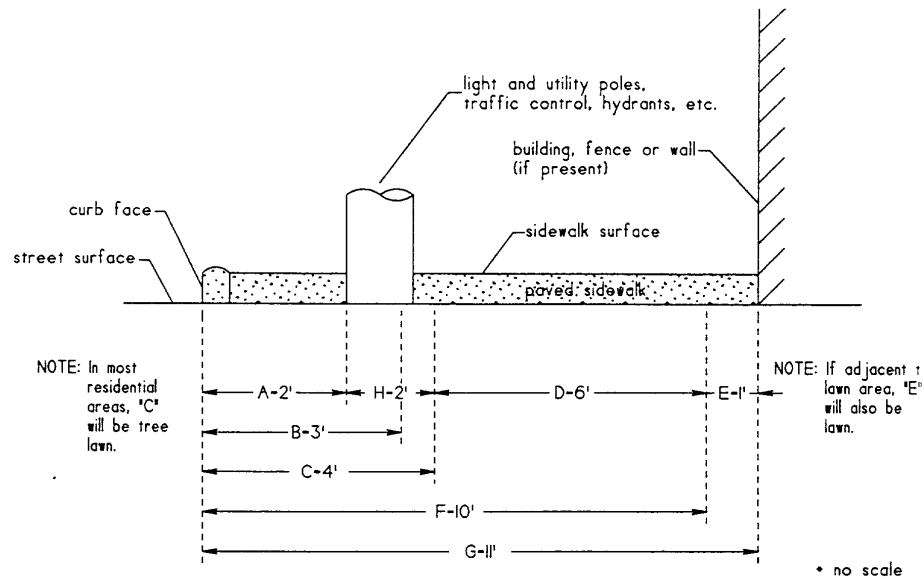


CORE AREA - CBD

CODE FOR DIMENSIONS

- A - minimum setback for objects.
- B - minimum setback for objects w/pedestrians between object and curb.
- C - width of utility/traffic control collector strip.
- D - minimum width of clear paved walkway for pedestrians.
- E - minimum clearance from building, wall or fence.
- F - minimum total sidewalk width.
- G - minimum total sidewalk width adjacent to building, wall or fence.
- H - location of light and traffic control poles, signs, fire hydrants, etc.

EXHIBIT I

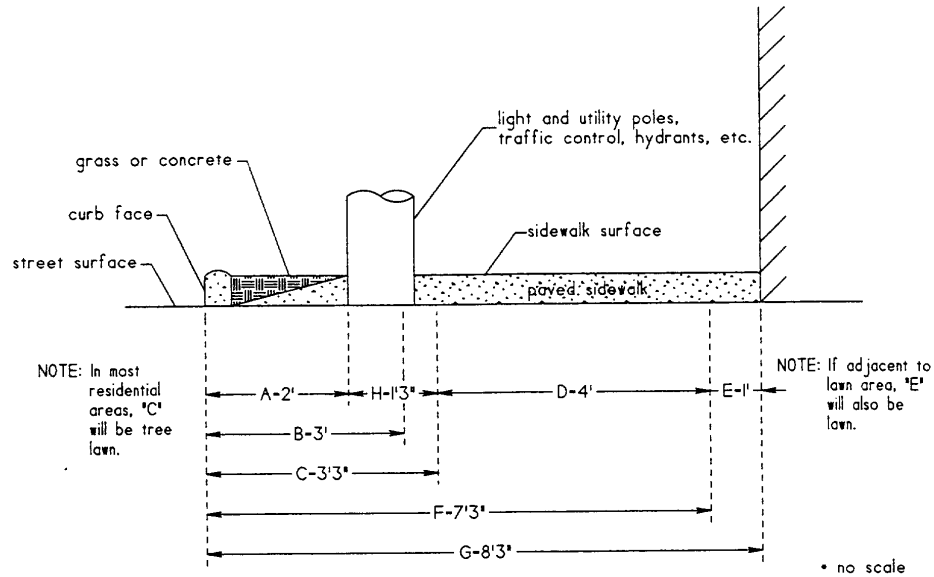


CBD FRINGE AREA, NBD's AND SCHOOL ZONES

CODE FOR DIMENSIONS

- A - minimum setback for objects.
- B - minimum setback for objects w/pedestrians between object and curb.
- C - width of utility/traffic control collector strip.
- D - minimum width of clear paved walkway for pedestrians.
- E - minimum clearance from building, wall or fence.
- F - minimum total sidewalk width.
- G - minimum total sidewalk width adjacent to building, wall or fence.
- H - location of light and traffic control poles, signs, fire hydrants, etc.

EXHIBIT J



RESIDENTIAL & OTHER NON-RETAIL AREAS

CODE FOR DIMENSIONS

- A - minimum setback for objects.
- B - minimum setback for objects w/pedestrians between object and curb.
- C - width of utility/traffic control collector strip.
- D - minimum width of clear paved walkway for pedestrians.
- E - minimum clearance from building, wall or fence.
- F - minimum total sidewalk width.
- G - minimum total sidewalk width adjacent to building, wall or fence.
- H - location of light and traffic control poles, signs, fire hydrants, etc.

Questions have arisen regarding definition or clarification of the above districts, and also whether other areas where there may be considerable pedestrian activity should be specifically identified. Such areas might include:

- Schools
- Churches
- Parks & Playgrounds
- Recreation Centers
- Senior Centers

Of these, only school zones are identified in any legal way related to street and sidewalk usage in either the Ohio Revised Code (ORC) or the Cincinnati Municipal Code (CMC). School zones are specifically defined in the O.R.C. and the C.M.C., and in fact are identified by traffic control devices on Cincinnati streets.

The consultant believes that the number of classifications used in a sidewalk space regulatory program should be kept to a minimum for simplicity, clarity, and enforceability, and ability to define them. Therefore, it is recommended that of the above “zones” mentioned, only school zones should be specifically identified. In the three levels of Area Types identified earlier on pages 38, 39 and 40, it would be appropriate with respect to pedestrian activity level, to include school zones in the same category with the CBD Fringe Area, and Other Business Districts.

It is believed that the CBD Core Area and the CBD Fringe Area have been specifically defined by actions of City Council, and specific boundaries could be written into regulatory legislation concerning objects and devices placed in the sidewalk space. Residential and Other Non-Commercial is self-descriptive.

The O.R.C. and C.M.C. definitions of a business district for speed limit purposes (50% of frontage occupied by business property for distance of 300 feet) is not relevant, because the businesses may be set far back from the sidewalk with little pedestrian activity, as in a shopping center. The Cincinnati Zoning Code establishes land use regulations for “Neighborhood Business Districts” and “Community Business Districts” but does not define them. City departments do have plats with established boundaries for recognized neighborhood business districts which could possibly be used.

A basic regulatory provision should be that any article, structure, or device, publicly or privately owned, which interferes with the basic functions of the utility/traffic control strip, or encroaches on the clear paved walkway is prohibited.

The types of objects, structures, or devices placed in the sidewalk space, can be classified as follows:

- Class 1* Permanent or semi-permanent placement
Examples: newspaper racks, benches, pay phones, bus shelters, large planters, sidewalk cafe tables.
- Class 2* Portable or movable
Examples: sandwich board signs, litter cans, small flower pots or planters, sidewalk cafe tables, sidewalk displays.

The “permanent” or “portable” classification could serve as a reasonable basis for determining whether a formal permit process is required.

Portable or movable items could be allowed without specific permits , subject to compliance with the basic regulatory provisions of sidewalk space and stability, with the understanding that enforcement would be primarily on a complaint and/or observed violation basis. Coverage for these items might be consolidated into a single section of the C.M.C. Coordination of Class 1 uses with Class 2 uses is essential.

Permanently or semi-permanently installed objects, structures, or devices should clearly be allowed only on a formal permit process. City-installed items should also comply with the same basic regulations. Because each of these items has very distinct characteristics, each will require an individual permit process. This could be done with a single C.M.C. section establishing the basic requirements for all privately placed features in the sidewalk space. Separate code sections should then authorize the City Manager to promulgate rules and regulations for each item with the code section itself as simple as possible. An example of such wording (although it now is in an

inappropriate section) is the authorization for news racks in Section 911.17, which has been supplemented by Administrative Regulation No. 67 now a part of the Public Works Department Right-of-Way Manual.

Some of the privately owned objects and devices which are likely to be placed in the sidewalk space, such as small planters, individual litter cans, and some benches are placed by the abutting property owner or tenant. The responsibility for maintenance of, and cleanup around the device is clear, and compatible with C.M.C. Section 721-147 requiring the abutting property owner to maintain the sidewalk.

The situation is different when the object to be placed, for example a bus stop shelter, or an advertising bench, is placed by an "absentee owner" with no other interest in the neighborhood. The permit issued by the City can and should require the owner to maintain the object or device in good condition, and to be responsible for any damage to the sidewalk curb or sod areas caused by the object. However, experience indicates that litter cleanup, removal of graffiti and repair of vandalism by the actual owner seldom occurs. The Sanitation Division reports that an increase in littering complaints has resulted when these objects are placed where there is no adjacent or nearby litter receptacle.

The question of whether, and to what extent, a property owner can influence the permit process in such situations is a legal one which needs to be addressed. The present wording of C.M.C. Section 723-20, deals with this issue with respect to permits for advertising benches at other than bus stops, by requiring the City Manager, or his designated representative, to notify the abutting property owner of the permit application, giving the property owner opportunity to comment, and the applicant opportunity to respond to the comments. Following the City decision on the matter, the applicant may file an appeal and request a hearing. The total elapsed time before a permit is finally issued or denied could be as much as four months. Also, the process is staff time-consuming and labor intensive.

Throughout the consideration of the regulatory system for privately placed objects in the sidewalk space, it must be recognized that the broader the coverage and the more restrictive the nature of the regulations, the greater are the budgetary and staffing requirements for effective administration and enforcement.

The decision on what legislative process should be used would be up to City Council. The extensive use of administrative rules and regulations could simplify various sections of the code, and give the administration more flexibility in dealing with changing conditions. However, City Council may not wish to delegate such broad responsibilities, and specific code provisions may be stronger and more effective with respect to enforcement procedures.

Consistency is highly desirable. In any case, considerable editing and restructuring of various sections of C.M.C. Section 723 and of C.M.C. Section 911-17 will be needed if a coordinated system of sidewalk space regulations is to be achieved. A revised C.M.C. Section 723-5 could establish the basic regulating provisions.

The scope of this study does not include the drafting of revised legislation. However, a suggested strategy or sequence of suggested revisions may be appropriate:

Step A

1. Revise and expand C.M.C. Section 723-5 to establish the basic regulatory provisions concerning placement, by private parties, of materials, objects, or obstructions in the street or sidewalk space, by provisions covering the following, except as specifically provided or supplemented in subsequent sections of the Code or by rules and regulations. These regulations should include the following items:
 - a. Objects should not interfere with City and authorized utility use of the Utility/Traffic Control Collector Strip or the minimum clear paved walkway width as proposed on page 38.

No object or device, shall be placed with its nearest point less than 2 feet from the face of the curb as specified by federal highway design regulations. However, no object or device which by its nature encourages or requires persons using the object to walk between the object and the curb (for example, a bus shelter, or a newsrack or bench facing the street) shall be placed closer than 3 feet minimum or desirably 4 feet from its nearest point to the face of the curb. The latter is a proposed new regulation based on application of ADA guidelines in similar situations.

- b. Privately placed objects or devices shall not be located to obstruct the reasonable use of the following:
1. Bus stops;
Newsracks may be located within bus stop zones but should not be placed so as to block the front or rear door of the buses.
 2. Front doors of major buildings; offices, hotels, department stores;
 3. Parking spaces, parking meter posts;
Newsracks may be located within parking zones and metered spaces if no other alternative is available. The boxes should be placed at the rear of the parking space to not block car doors.
 4. Cross walks, or intersections as defined by C.M.C. Sections 501-1-C3 and 501-1-I respectively;
 5. Fire hydrants and boxes;
 6. Pull boxes for City light poles and/or traffic control;
 7. Utility boxes such as water, sewer, gas, telephone;
 8. Handicapped ramps, sidewalks, driveways;
 9. Sign stanchions;
 10. Truck loading zones, taxicab stands;
Where no other space is available, newsracks may be placed in loading zones if the row consists of no more than 3 newsracks and it is located to not interfere with vehicle doors and loading.
 11. City licensed vendor locations,(within four (4) feet clearance of either side); and
 12. Other locations presenting danger to the safety and welfare of persons using the right-of-way or creating a public nuisance.
- c. Except as specifically permitted by legislation, no privately placed object or device should occupy more than 4 square feet of sidewalk space, nor be less than one (1) foot high, nor be more than 3 feet 3 inches in height. Such object or obstruction shall not have projections or sharp corners, and shall have sufficient weight and stability to resist tipping or falling as a result of wind or the actions of children. The object or device shall have a total weight of not less than 150 pounds.

- d. Any privately placed object or device shall be maintained in good repair, and reasonably clean and free of graffiti, rust, or dirt. The device and surrounding area shall be kept reasonably free of litter. Portable or movable objects or devices may be placed only by the owner of the abutting property.
- e. The person or persons placing any object or device in the sidewalk space shall assume liability for any harm or damage resulting from the placement or presence of the object or device.

Step B

The following permanent-type or non-movable objects or obstructions in the sidewalk space should be covered by specific sections and permit procedures in the Cincinnati Municipal Code:

1. Bus Stop Shelters With or Without Advertising (not presently covered in the Code.)

Privately owned bus shelters should be placed only on a permit basis, with or without advertising. Basic sidewalk space requirements should be included, along with review and inspection of construction and electrical safety requirements.

2. News racks (now allowed by C.M.C. Section 911-17)

The phrase allowing news racks should be deleted from Sec. 911-17 and a new section created in Chapter 723. The new section could provide permits to be issued as authorized by the City Manager or his designee (Administrative Regulation No. 67). Both the new code section and the Administrative Regulation may need to be broadened to allow equally for dispensers of other printed material.

3. Park Benches in Public Right-of-Way (Sec. 723-19).

This section is appropriate for retention in the Code, but a reference to the basic sidewalk width provisions should be added.

4. Advertising Benches in Public Right-of-Way (Sec. 723-20)

This section was revised in January, 1996, but a reference to the basic sidewalk width provisions should be added. A new section of the code should be established for this purpose.

5. U.S. Mail Boxes (Sec. 723-17)

This section is appropriate for retention in the Code, except that it should be updated to allow the freestanding boxes now in general use. A new code section or an addition to this section should be developed to regulate collection boxes placed by private parcel delivery services.

6. Sidewalk Cafe Tables (placed in sidewalk space bounded by physical barrier)

A new Code section is needed.

7. Large planters (size not identified in Sec. 723-22)

Planters larger than 3 square feet should be treated in a separate section as a permanent or non-movable object, installed under a specific permit issued by the City Manager or his designated representative, with reference to the basic sidewalk width and other safety provisions.

The actual permit procedures for all of the above items should be made as similar in process and as simple as possible.

1. Permits should be issued by the City Manager or his designated representative.
2. Permits should be site specific.
3. A formal appeal process is not recommended. Such a process is time-consuming, costly, and frustrating to both the appellant and the City personnel involved. In city government there is an inherent appeal procedure through the division head, department head, City Manager, and City Council.
4. All permittees should be required to carry an appropriate level of liability insurance. For a permittee with multiple installations, this could be a blanket-type policy.
5. For objects which could involve substantial removal costs in the event of default by the permittee, a bond to cover the removal and/or repair costs should be required.
6. Permit fees (including inspection costs and fees) should not be artificially inflated and used as a "screening" method to discourage placement of items legally allowed. However, the actual costs of administering these permits are often underestimated. The public should not subsidize private uses of the sidewalk space, and fees should be sufficient to cover reasonable administration and inspection costs.

Step C

Placement by private parties of the following movable or portable type objects could be allowed without specific permits, with enforcement on a complaint or observed violation basis:

1. Retail Sidewalk Display (Sec. 723-11)

This section is appropriate for retention.

2. Freestanding Signs (Sandwich Boards) on the Sidewalk (Sec. 723-12)

This section is appropriate for retention. Further guidelines were established by Administrative Regulation No. 71.

3. Litter Receptacles--Private Owners (Sec. 723-21)

This section is appropriate for retention, but could be combined with a revised Sec. 723-22.

4. Planters and Other Movable Fixtures (Sec. 723-22)

This section should be revised. The title should be revised to read "Small Planters and Other Movable Fixtures". The first paragraph should also have the provision added that abutting property owners may install small planters (less than 4 square feet in area) providing that the basic sidewalk width and other safety provisions are complied with. This section could also incorporate litter receptacles along with other movable fixtures, since the treatment of them would be consistent with that of small planters.

5. Sidewalk cafe tables, portable, with no surrounding physical barriers. A new Code section is needed, referencing revised Section 723-5 for physical and space requirements.

Step D

C.M.C. Section 911.17. Posting Bills on Streets should be revised. The following revisions are suggested:

1. The wording to the first semicolon should be a separate sentence reading, "No person shall hang or tack upon or attach to any pole, post or other structure on any street, avenue, or alley right-of-way, or any park or public ground of the City, any sign, handbill, card, circular or other printed material, including directional signs." This would clarify the intent, and the fact that the section does not deal with freestanding signs.

2. The next portion of the section, to the next semicolon, should be revised to indicate that the types of directional signs referred to are installed by the City when approved.
3. The clause regarding newspapers should be deleted from Sec. 911-17, and transferred to a new section in Chapter 723. The term “newspapers of general circulation” should be expanded to include other printed material to be sold or distributed.

Other Comments

In the process of revising the various code sections, there should be an effort made to achieve consistency in wording with respect to the terms “revocable minor street privilege” and “permit”. Also, all should be granted by the “City Manager or his designee”. The designee would in most cases be the Director of Public Works or the City Engineer.

It is recognized that City Council has the authority to pass “notwithstanding” ordinances granting revocable street privileges which may be contradictory to one of more sections of the Code. However, more consistency in the City’s regulatory framework, based on preserving the basic service functions of the sidewalk space, may reduce the occurrence of such cases.

The purpose of the suggested code sections allowing placement by private parties of movable objects such as retail sidewalk displays, freestanding signs, litter receptacles, and planters without permits is to minimize the regulatory work load, and at the same time reduce the “red tape” involved for citizens who desire to place these usually non-controversial items in the sidewalk space. Administrative rules and regulations can supplement the code sections when required, and can be called to the attention of the citizens involved, along with the code provisions, when enforcement is necessary on an observed violation or complaint basis.

V. Conclusions and Summary

A number of general conclusions can be drawn from this very interesting and challenging project, including the following:

1. The fact that 55% of the cities to whom the questionnaire was sent responded indicates that there is general interest in this subject. This is further indicated by the fact that almost three quarters of the city contact persons took the time to send copies of their legislation and/or regulations, and that almost all asked to receive a copy of the final report.
2. The sheer volume of elements found within the sidewalk areas of Cincinnati, the overwhelming majority of which are public safety or public service elements, indicates the importance of comprehensive but reasonable regulation of other objects or fixtures which may be placed in these areas.
3. These regulations should be based on assuring that the basic functions of the sidewalk areas (safe pedestrian passage, and space for public safety and service elements) are not compromised.
4. While formal regulatory processes might not be involved, city projects, including but not limited to streetscapes, street improvements and other city facility construction should comply with the same basic regulatory concepts for sidewalks and sidewalk space.
5. It may no longer be practical for the City of Cincinnati to “change directions” and prohibit the placement of any privately owned objects which are now permitted by the Cincinnati Municipal Code. However, it seems clear that various sections of the Code should be revised, for simplification and consistency in assuring that the basic functions of the sidewalk space are not compromised.

It is hoped that this project and report will assist in achieving the desired results.